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EXAMINER

MADSEN, ROBERT A

| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,792

Applicant(s)

SCHOU, ROAR B.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 8-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/12/02, 5/12/02
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1-7 in the reply filed on Au is acknowledged. The traversal is on the ground(s) that the search and examination of the entire application could be made without serious burden. However, claims 8-13 are directed to a liner with embossments or apertures and does not recite any particular content (e.g. a food substance), and the method of claims 1-7 does not require a liner. The invention of claims 1-7 requires a search in the class of 426 and 53, whereas the search for a liners for block cartons as recited in claims 8-13 would require a search in classes 229 and 220. As evidenced by, Kersh (US 3118590) is a block carton liner (i.e. wax coated carton) that folds via a short side, the recited structure of claims 8-13 can be used in a method packaging cigarettes. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites " in lines 22-24 the "unfrozen plate of food substance is positioned in a freezer with a view to freezing the plate of food substance..." , but the packaging is a carton (i.e.

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cardboard or paperboard based), which would not make it possible to view the food in the carton. For examination purposes, it will be assumed that the freezer is plate freezer as disclosed.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1,3,4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (WO 97/06064) as evidenced by Nielsen (WO 9602422) in view of Nakano (JP 08-196196).

6. Regarding claims 1,3,4, Nielsen'064 teaches filling fish into a rectangular carton package that includes two short and two long side walls, and a bottom and cover panel wherein the food is filled onto the bottom panel, the cover is placed over the carton and the packaged food substance is frozen in a freezer frame in a shelf/plate freezer (Page 2, line 27 to Page 4, line 5, Page 6, line 16 to Page 7, line 22, Page 9, lines 20-25). Nielsen '064 further teaches Nielsen '422 is incorporated by reference. As evidenced by '422, such packages are also known to contain minced fish meat. However, '064 is silent in teaching extruding a plate of fish material as recited in claims 1 and 4, and that the carton is

transported via a conveyor that is synchronized with the extruder as recited in claim 3.

7. Nakano teaches a method of packaging minced meat products that provides a consistent weight for each package. Nakano uses an extruder in combination with a cutter and a weigh conveyor so that one may sever the extruded meat product when the desired weight of minced meat product is filled into each package. Additionally empty packages are provided via a conveyor that is synchronized with the discharge of the extruder to further assure uniform weight in each package(Paragraphs 1-12,15-22, Figures).
8. Therefore, it would have been obvious to modify Nielsen '064 and provide an extruder in combination with a cutter and a weigh conveyor along with empty packages, such as the carton in the freezer frame, positioned on via a conveyor that is synchronized with the discharge of the extruder since Nakano teaches utilizing an extruder, cutter, and synchronized empty package conveyor/extruder assembly will assure uniform weight in minced meat package.
9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (WO 97/06064) as evidenced by Nielsen (WO 9706064) in view of Nakano (JP 08-196196), as applied to claims 1,3,4, above, further in view of Vogt (US 1953520).
10. Regarding claim 2, Nielsen '064 teaches a carton with the lid attached to a long end, but is silent in teaching a lid attached to a short end. Vogt also teaches a method freezing fish in cartons. However, Vogt teaches providing a

particularly shaped carton that increases the cooling surface area of the sides of the carton. This type of carton includes a cover panel is connected via a short end panel (Page 1, lines 1-40, Page 1, line 110 to Page 2, line 7, Page 3, lines 70 to 120) Therefore, it would have been obvious to further modify Nielsen '064 and include a carton having a cover panel connected via a short end panel since Vogt teaches this type of carton is used to provide increased cooling surface area on the sides of the carton and provide more efficient cooling.

11. Claims 5,6,7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (WO 97/06064) as evidenced by Nielsen (WO 9602422) in view of Nakano (JP 08-196196) as applied to claims 1,3,4 above, further in view of Battistella(US 4907421).

12. Regarding claims 5, 6 and 7, as discussed above in the rejection of claims 1, 3, and 4, modified Nielsen '064 utilizes a conveyor system, a shelf freezer, and freezer frames, but is silent in teaching utilizing a pressure applied the shelf freezer plates such that pressure is applied to the top and bottom panels of the carton, as recited in claim 5, and that the conveyor is provided with devices, such as freezer frames, that keep the side panels perpendicular to the bottom panel as recited in claims 6 and 7.

13. Battistella also teaches freezing food products with shelf freezers. However, Battistella teaches that unlike prior art methods the shelf freezer utilizes plates to press both panels of the food product cartons or product containing freezer frames , utilizes a conveyor system (i.e. an automatic method),

and shelves/plates that can be adjusted for the height of the food product (Column 1, line 43 to Column 2, line 40, Column 4, lines 10-65). Therefore, it would have been further obvious to include a shelf freezer with plates to press both panels of the food product cartons with plates, as recited in claim 5, since Nielsen '064 teaches cartons in freezer frames for shelf freezers and Battistella teaches a shelf freezer that not only provides pressure to the top and bottom of a freezer frame, but also is capable of being synchronized with an automatic conveyor system, such as the one of modified Nielsen '064 discussed in the rejection of claims 1,3 and 4, and is able to be adjusted for any particular frame/carton height. It would have been further obvious to utilize the frame/carton combination of Nielsen '064 as the devices for maintaining the shape of the cartons while the cartons are being transported and charged with food since Battistella teaches freezer frames are transferred to the shelf freezer with a conveyor. Since the cartons are transferred to the filling station via a conveyor, including placing the cartons inside the freezer frames prior to filling would not only eliminate a separate freezer frame fill step, but would allow the filling station to be connected to the freezer system via one conveyor and improve overall efficiency.

14. Claims 1,4,5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw(US 4052836) in view of Battistella(US 4907421).

15. Regarding claims 1,4, and 5, Shaw teaches extruding an unfrozen plate food (through item 58) directly into a rectangular carton package, as recited in

claim 4, that includes two short and two long side walls, and a bottom and cover panel wherein the food is filled onto the bottom panel, the cover is placed over the carton and the packaged food substance is frozen. The purpose of providing the plate of food is for uniformity. The process is automatic such the cartons are moved along via a conveyor to the filler, and the movement of the cartons relative to the filler is synchronized (See Figures, Column 1, lines 33-50, Column 2, lines 5-60, Column 4, lines 5-36, Column 6, line 58 to Column 7, line 20).

However, Shaw is silent in teaching the particular method of freezing such as pressing the carton between two plates as recited in claim 1 and 5.

16. Battistella also teaches freezing uniformly shaped food products is conventionally done with freezer plates. However, Battistella, unlike prior art methods, teaches utilizing plates to press food product cartons that are fed via a conveyor system (i.e. an automatic method), the flexibility of operating with or without pressure so that either frames containing product or cartons containing product can be compressed such that the plates abut the top and bottom panels of the carton, and the plates that can be adjusted for the height of the food product (Column 1, line 43 to Column 2, line 40, Column 4, lines 10-65).

17. Therefore, it would have been obvious to modify Shaw and include the freezing plate method of Battistella that applies pressure to the top and bottom panel as recited in claims 1 and 5, since Battistella not only teaches a method of freezing uniformly shaped food products compatible with an automatic method, but the method of freezing is compatible with either cartons or with mold frames and any height of product.

18. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw (US 4052836) in view of Battistella(US 4907421), as applied to claims 1,4,5, above, further in view of Vogt (US 1953520).
19. Shaw is silent in teaching the cover panel is connected via a short end panel.
20. Vogt also teaches a method of automatically freezing uniformly shaped food items in cartons. However, Vogt teaches providing a particularly shaped carton that increases the cooling surface area of the sides of the carton. This type of carton includes a cover panel is connected via a short end panel (Page 1, lines 1-40, Page 3, lines 70 to 120) Therefore, it would have been obvious to further modify Shaw with a carton having a cover panel connected via a short end panel since Vogt teaches this type of carton is used to provide increased cooling surface area on the sides of the carton.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Reghele et al. (US 6351927 B1) and Jensen et al. (US 4919951) teach synchronized extruding, cutting , and packing of meat. Whittingham et al. (US 4442741) teach synchronized extruding, cutting, and conveying of meat. Imaoka et al. (JP 10-129610 A), Gorton (US 2827383), and Miyoujin (JP 61015669A) teach synchronized extruding and molding of fish.

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Dewhurst (US 3602422) and Mayo (US 3464833) teach applying pressure to fish cartons in freezer plates.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Art Unit 1761

